

197157

STATE OF SOUTH CAROLINA

(Caption of Case)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

Happy Rabbit, LP on behalf of Windridge
Townhomes,
Complainant,

Posted: lod

Dep: SA

Date: 2/4/09

Time: 10:30

v.

Alpine Utilities, Inc.,
Defendant.

DOCKET
NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

Address: Post Office Box 8416

Telephone: 252-3300

Columbia, SC 29202

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Other: _____

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other: _____

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

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FEB 04 2009

Print Form

Reset Form

PSC SC
DOCKETING DEPT.

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

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TRACEY C. GREEN
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

February 3, 2009

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RECEIVED
2009 FEB -3 PM 4:28
SC PUBLIC SERVICE
COMMISSION

RE: Happy Rabbit, LP on behalf of Windridge Townhomes v. Alpine Utilities, Inc.;
Docket No. 2008-360-S

Dear Mr. Terreni:

I am writing to you concerning Alpine Utilities, Inc.'s ("Alpine") pending Motion to Compel and Motion to Suspend Testimony Deadlines filed in the above-referenced docket. Furthermore, Alpine is compelled to address Happy Rabbit, LP's ("Happy Rabbit") Response to these motions filed with the Commission on January 30, 2008.

With respect to Alpine's Motion to Compel, Alpine acknowledges that, on February 2, 2009, Happy Rabbit provided responses to Alpine's outstanding discovery requests, albeit twenty-five (25) days after the responses were originally due. Therefore, the only matter remaining to be determined on Alpine's Motion to Compel is the issue of an appropriate sanction. Alpine submits that the putative time constraints associated with Happy Rabbit's pursuit of other legal matters provides no justification for its failure to cooperate in discovery in accordance with Commission rules and it should therefore be sanctioned.

Further, the unwarranted delay in Happy Rabbit's responses to these discovery requests, and the nature of the responses provided and the manner in which they were provided, require that Alpine continue to maintain its Motion to Suspend Testimony Deadlines. Alpine received written responses to its discovery requests, which Happy Rabbit has characterized to the Commission as "voluminous", yesterday, which is only eight (8) days before Alpine's prefiled direct testimony in this matter is due. Further, Alpine was not provided copies of requested documents with Happy Rabbit's responses and instead was required to review the documents in

the offices of counsel for Happy Rabbit and request that photocopies be made. After these responses were provided and documents were produced yesterday afternoon, counsel for Alpine has been able to review them and has determined that additional discovery is necessary in order to properly prepare its case in this matter.¹

As the Commission is aware, Happy Rabbit has initiated two separate actions, in circuit court and before the Commission, advancing the same legal argument which Alpine continues to contend is without merit. Nevertheless, Happy Rabbit voluntarily chose to pursue these parallel actions of its own accord and Alpine is entitled to fully prepare its case in both matters. Additionally, the serious nature of the instant Complaint, and its potential ramifications, both for Alpine and Happy Rabbit's tenants, require Alpine to fully explore the nature of the allegations contained therein.²

From the time it filed this action on September 16, 2008, Happy Rabbit has been able to enjoy four and one-half months in which to prepare its case, while at the same time withholding responses to "voluminous" discovery and thereby failing to explicate the substance of its Complaint. The importance of the issues raised by this matter make it critical that Alpine properly gather and understand all of the pertinent facts so that it may effectively present its position in this matter and so that the Commission may make an informed decision on this matter

¹ By way of example, Alpine requested copies of tenant leases from Happy Rabbit in order to ascertain whether Happy Rabbit had agreed to provide its tenants with sewer services as part of the rental charged. Certain of the documents provided appear to support Alpine's assertion in that regard and, therefore, Alpine believes that further investigation on this matter is required. Furthermore, Alpine requested copies of any engineering plans detailing the placement and location of any and all sewer infrastructure serving the property and Happy Rabbit provided documentation in this regard. It would appear that the sewer infrastructure installed by Happy Rabbit's predecessor is incapable of serving two individual tenants located in a single duplex as would be required under the Commission's rules and regulations if separate service for each tenant were to be established as Happy Rabbit seeks. Cf. RR.103-535.F and P. Therefore, Alpine will require additional time to properly review these documents and their impact on the instant Complaint.

² As referenced in its Motion to Dismiss previously filed with the Commission, Alpine began serving the referenced property in 1984 pursuant to an agreement with the original owner of Windridge Townhomes in which the owner agreed to become a customer of Alpine and be responsible for sewer services provided to the property. As acknowledged in Happy Rabbit's responses to Alpine's Requests to Admit, Ms. Carolyn Cook and, subsequently, Happy Rabbit purchased the property and continued their relationship as a customer of Alpine. Even in the absence of these facts, Happy Rabbit would nonetheless be the customer of Alpine. See R. 103-534.A and B. Furthermore, as admitted by Happy Rabbit, the tenants of Windridge Townhomes have never been customers of and have not established a customer relationship with Alpine. Nevertheless, Happy Rabbit now asks the Commission to nullify a twenty-five-year old agreement and force the tenants of Alpine to become customers based upon Happy Rabbit's erroneous interpretation of a statute through a Complaint which Alpine asserts has not been brought within the applicable statute of limitations. Furthermore, Alpine believes that the facilities installed by the developer and currently in place on the property are incapable of serving two separate tenants in each duplex inasmuch as it appears that a single service line serves each duplex. Therefore, should the Commission agree with Happy Rabbit's position in this matter, the current tenants of Happy Rabbit, **who are not parties to this action and have received no notice of Happy Rabbit's efforts in this regard**, will not only be forced to become customers of Alpine, but will also be required to pay for the installation of the necessary facilities to serve the individual units in accordance with Commission rules and regulations. Cf. R.103-502.3 and 103-540. These costs will surely be significant for these tenants who have, to date, been receiving sewer service pursuant to Happy Rabbit's customer relationship with Alpine since it and its associated predecessor, Ms. Cook, purchased the property over nine (9) years ago.

which could have ramifications for persons or entities which are not even parties in the case. Alpine therefore asserts that additional time to conduct further discovery and to prepare for this matter is necessary in order to afford it the right of administrative due process.

Alpine would, therefore, restate its motion that the Commission suspend Alpine's prefiled direct testimony deadline until February 17, 2009. This would effectively result in a one (1) week extension for Alpine's prefiled direct testimony. So as not to prejudice any of the parties, Alpine would similarly consent to a commensurate extension in the current rebuttal and surrebuttal deadlines. Alpine believes that such a delay would not impede the Commission's ability to receive and review the information prior to the established hearing date of March 10, 2009.

Additionally, given the procedural issues that have arisen in this matter since its inception, Alpine would respectfully request the appointment of a Hearing Officer in this matter. In the event that further such issues should occur, Alpine submits that a Hearing Officer would be able to effectively and efficiently rule on these matters so as to provide the parties with guidance while maintaining the Commission's interest in administrative economy.

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.

A handwritten signature in black ink, appearing to read "Benjamin P. Mustian", with a long horizontal flourish extending to the right.

Benjamin P. Mustian

BPM/cf
Enclosures

cc: Nanette S. Edwards, Esquire
Richard L. Whitt, Esquire

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S**

Happy Rabbit, LP on behalf of Windridge,)
Townhomes,)
)
Complainant)
)
v.)
)
Alpine Utilities, Inc.,)
)
Defendant.)
_____)

CERTIFICATE OF SERVICE

SC PUBLIC SERVICE
COMMISSION

2009 FEB -3 PM 4: 28

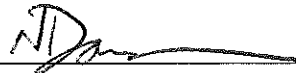
RECEIVED

This is to certify that I have caused to be served this day one (1) copy of **Letter Regarding Alpine's Motions to Compel Discovery and Suspend Testimony Deadlines** via hand delivery to the address below:

Richard L. Whitt, Esquire
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, SC 29211

I further certify that I have caused to be served one (1) copy of the above-referenced documents by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211



Nathan Dawson

Columbia, South Carolina
This 3rd day of February, 2009.